STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 6-97:

BROWNING FEDERATION OF TEACHERS, LOCAL NO. 2447, Complainant, vs. BROWNING PUBLIC SCHOOLS, ROGER HELMER, SUPERINTENDENT, Defendant.	**FINDINGS OF FACT; CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

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I. INTRODUCTION

On September 13, 1996, Browning Federation of Teachers, Local No. 2447, Complainant, filed an Unfair Labor Practice Charge (ULP) against Defendant, Browning Public Schools, Roger Helmer, Superintendent. The charge indicated the Defendant infringed upon the rights of Complainant Unit Employees to bargain collectively concerning wages, hours and working conditions guaranteed under Section 39-31-201, MCA, and Section 39-31-305, MCA. The Complainant also charged the Defendant with violating Section 39-31-401(1) and (5), MCA, by refusing to bargain with the Complainant's exclusive bargaining representative regarding drug and alcohol testing.

Following an investigation, the Employment Relations Division issued an Investigation Report and Determination on November 21, 1996 which found probable merit to the charge. Hearing Officer Joe Maronick conducted a hearing in Browning, Montana on May 16, 1997. Parties and witnesses included: Roger Helmer, Sharon Magee, Ivan Small, Larry Singleton, Darwin Feakes, Barbara Gallup and Kristen

St. Goddard. Montana Federation of Teachers Staff Director Tom Burgess represented the Complainant. Montana School Board Association Director of Labor Relations Rick D'Hooge represented the Defendant. Complainant Exhibits VE-1 through VE-6, and VE-10 were admitted into the record without objection. Complainant Exhibit VE-7 was denied admission on the basis that the document postdated the ULP charges. Exhibits VE-8 and VE-9 were admitted over objection raised regarding their completeness or the date of their generation. The admission basis was that the author of the documents would testify and the charge violations may be continuing. Exhibits VE-11 through VE-14 were admitted over an objection relating to the timeliness of their submission. The Hearing Officer took Administrative Notice of the charge response, the investigation report, Defendant Exhibits A through J as well as all process and notice documents. Exhibit J was admitted over a submission timeliness objection raised by the Complainant.

Post-hearing briefs were concurrently submitted on June 23, 1997 and reply briefs concurrently submitted June 30, 1997.

II. FINDINGS OF FACT

1. In the spring of 1996, the Complainant and Defendant exchanged discussions and correspondence regarding a drug testing policy (See Exhibit A-F). The Defendant did not require members of the Complainant union to take drug tests. On April 10, 1996 (Exhibit A), the Complainant requested drug policy negotiations. On April 24, 1996 and May 30, 1996, the parties met, in part, regarding the drug testing policy (See Exhibits B & C). On August 23, 1996, the parties met and discussed the drug testing matter. The Defendant Superintendent, Mr. Helmer, asked the

Complainant Representative, Mr. Feakes, to identify 10 dates for negotiations regarding the drug testing policy and provide those dates for him. Complainant did not offer negotiation dates as requested. On September 11, 1996, the Complainant filed this charge alleging the Defendant unilaterally implemented the drug testing policy without required and requested negotiation.

2. The Defendant did not implement a drug testing policy for the Complainant unit members. The Defendant has not required any Complainant unit members to take a drug test.

3. Before the beginning of the 1996-97 school year, the Defendant Superintendent advised the Complainant members that they must sign in when they arrive at work, sign in and out if they left during the work day and sign out when they completed work at the end of the day. In previous years, the Defendant had required the Complainant unit members to sign in and out only if they left the school premises during the middle of the work day. The work day was normally from 8:00 a.m. to 4:00 p.m.

4. The Collective Bargaining Agreement Article IV (Exhibit VE-3) provides, in part:

> Powers of the Board -- Policy and Operation
>
> A. All existing policies and procedures which heretofore have been in force and effect as clearly established policy outlined in "Adopted Board Policies", School District No. 9, Glacier County, Browning, Montana, shall remain in full force and effect unless expressly modified or rescinded by the Board of Trustees.

As pointed out in the October 9, 1996 response to the ULP charge, the policies manual that has been in existence for many years in Browning indicates:

VI. Personnel:

Check-In/Check-Out: Each district office will maintain a roster for classified employees to sign in and out of the department. All arriving and leaving times are to be recorded. All certified staff will sign in and out when leaving the building/department between 8:00 a.m. and 4:00 p.m.

The school district has operated under this policy. However, teachers have been required to sign in and out only during day time absences, not at the beginning and end of their shifts.

Article IV(J) of the CBA, provides:

J. Teachers are to be on duty from 8:00 a.m. to 4:00 p.m., except when otherwise assigned.

5. The ULP Charge (Exhibit VE-1) in count number 2 indicated that the Defendant "installed time clocks" and that the installation constituted a violation of Section 39-31-305, MCA, and 39-31-401(1)(5) MCA, because the use of time clocks changed the terms and conditions of employment. The Defendant intended to install time clocks but had not done so prior to the filing of the charge or charge hearing.

III. DISCUSSION

1. Montana law requires a public employer to bargain collectively in good faith with the exclusive bargaining representative of a group of employees who have associated with a labor union. §39-31-305(1), MCA. The obligation to bargain in good faith extends to the issues of wages, hours, fringe benefits and other conditions of employment. The charge maintains that the Defendant committed an unfair labor practice by refusing to bargain concerning the implementation of a drug testing policy and the installation of time clocks.

2. The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using federal court and NLRB precedence as guidelines in interpreting the Public Employees' Collective Bargaining Act (the Act) as the state Act is so similar to the federal Labor Management Relations Act (LMRA). State Department of Highways v. Public Employees Kraft Council, 165 Mont. 349, 529 P.2d 785 (1974), 87 LRRM 2101; AFSCME Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753 (1976); State ex rel Board of Personnel Appeals v. District Court, 193 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local 45 v. State ex rel Board of Personnel Appeals, 195 Mont. 272, 653 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young (Young III), 221 Mont. 13, 683 P.2d 185, 119 LRRM 2682 (1984).

3. The standard adopted by the NLRB for determining whether a change in the conditions of employment must be negotiated is whether the change is "material, substantial and significant." Litton Microwave Cooking Products, 136 LRRM 1163 (1990); Wabash Magnetics, Inc., 88 LRRM 1511 (1974); Murphy Diesel Company, 76 LRRM 1469 (1970).

4. The Defendant did not implement a drug testing policy which required testing of any Complainant unit members. The application of a policy to the unit members was properly identified as a matter for negotiation. The actions of the Defendant evidenced a willingness to negotiate and did not approach the threshold of refusing to bargain in good faith. The Defendant asked the Complainant for times at which negotiations could proceed but the Complainant did not identify dates. The Defendant did not

implement a drug testing policy or actual tests affecting any unit members.

5. The collective bargaining agreement incorporated by reference the Defendant's policies manual which contained a policy on checking in and out. Thus the requirement to sign in and out not only during periods within the work day but at the beginning and end of the work day was a specifically included term in the collective bargaining agreement. Even if it had not been included, the change which occurred was not a "material, substantial, and a significant change" from prior practice. The Complainant unit members had been required to sign in and out during absences which occurred during the middle of the day. The only addition was the signing in and out when the unit members first arrived at work and when they finally left the work site. The unit members were required to report to work and in fact work their normal work shift. That requirement did not change. The change requiring unit members to sign in and out when starting and ending their work day is not a substantial or significant and is in conformity with the terms of the collective bargaining agreement.

IV. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction over this matter pursuant to §39-31-406, MCA.

2. The Defendant did not refuse to bargain in good faith with the Complainant. The Defendant did not adopt a drug testing policy and indicated a willingness to bargain over the terms of a policy.

3. The Defendant was not required to bargain with the Complainant over requiring unit members to begin checking in and out. This change is not material, substantial and significant.

V. RECOMMENDED ORDER

ULP 6-97 is hereby dismissed.

DATED this 3rd day of September, 1997.

BOARD OF PERSONNEL APPEALS

By: Joseph V. Maronick
Joseph V. Maronick,
Hearing Officer

NOTICE: Pursuant to ARM 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than September 26, 1997. This time period includes the 20 days provided for in ARM 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59604